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February 3, 1995

Reply to the
Attention of M/S SO-155

COPY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stanford J. Nudelman, Registered Agent for
S.J. Nudelman and Son
2707 N.W. Nela Street
Portland, Oregon 97210

Re: S.J. Nudelman and Son
Toxic Substances Control Act
Docket No. 10-95-0012-TSCA

Dear Mr. Nudelman:

Enclosed is an administrative complaint for the assessment of civil penalties that has been filed against S.J. Nudelman and Son (Respondent) by the Environmental Protection Agency (EPA). A copy of the penalty policy and the Consolidated Rules of Practice that apply to this complaint are also enclosed.

The complaint alleges that Respondent violated the disposal provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). As explained in the complaint, Respondent has 20 days to do one of the following:

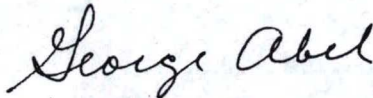
1. arrange a settlement conference and request and receive a written extension of time;
2. file a written answer and request a hearing with an administrative law judge; or
3. pay the proposed penalty.

The specific procedures for each of the three options are explained in the complaint. Also, as explained in the complaint, if Respondent fails to take one of the actions outlined above, a default order could be entered against it. After entry of an order of default, penalties can be assessed without further notice.

However, we are available to discuss with Respondent the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Stephanie Delaney, Assistant Regional Counsel,

is the attorney handling this complaint for EPA. If Respondent wants to arrange for a settlement conference, request a time extension, or has any questions, Ms. Delaney may be reached at (206) 553-6685.

Sincerely,

A handwritten signature in cursive script that reads "George Abel".

George Abel, Chief
Pesticides and Toxic Substances Branch

cc: Rebecca Woods, EPA Headquarters

Enclosures

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10 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

11 **In the Matter of:**

12 **S.J. NUDELMAN AND SON,**

13 **Respondent.**
14

DOCKET NO. 10-95-0012-TSCA

COMPLAINT

15 **I. BACKGROUND**
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18 1. This is an administrative action instituted pursuant to Section 16(a) of the
19 Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), for the assessment of a civil
20 penalty. The Complainant is Region 10, United States Environmental Protection Agency
21 (EPA), which has been delegated the authority to institute this action.

22 2. Complainant alleges that the above-named Respondent violated Section 15 of
23 TSCA, 15 U.S.C. § 2614, by violating the regulations at 40 C.F.R. Part 761, which were
24 promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, and pertain to the use
25 and disposal of polychlorinated biphenyls ("PCBs").

26 3. On June 13, 1994, an EPA inspection ("the inspection") was performed at
27 facilities of Respondent located at 2707 N.W. Nela Street, Portland, Oregon. The

1 purpose of the inspection was to determine compliance with TSCA, 15 U.S.C. § 2601 et
2 seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761. A
3 violation was documented as a result of the inspection; the violation is described in
4 Section II below.

5 4. During the inspection, EPA obtained a sample, EPA sample number
6 94244569, from potting compound which had leaked from a ruptured fluorescent light
7 ballast.

8 5. EPA analysis of sample number 94244569 detected the presence of PCBs in
9 the sample at 96 parts per million.

10 11 12 II. VIOLATION

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14 6. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(d) provides that spills
15 and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater
16 constitute the disposal of PCBs. PCBs resulting from the cleanup and removal of spills,
17 leaks, or other uncontrolled discharges, must be stored and disposed of in accordance
18 with 40 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the
19 improper disposal of PCBs.

20 7. COUNT ONE: EPA analysis of a wipe sample, Number 94244569, taken
21 from potting compound from a ruptured fluorescent light ballast, detected 96 parts per
22 million (ppm) PCB. The release of PCBs documented by this analysis constituted the
23 improper disposal of PCBs by Respondent.

III. PROPOSED CIVIL PENALTY

8. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violation cited in this Complaint, the nature, circumstances, extent, and gravity of the violation alleged, Respondent's ability to pay, effect on the Respondent's ability to continue to do business, the degree of Respondent's culpability, and such other matters as justice requires, the Complainant proposes that Respondent be assessed the following penalty calculated in accordance with the PCB Penalty Policy. A copy of the PCB Penalty Policy accompanies this Complaint.

9. The nature, circumstances, and gravity of Respondent's failure to properly dispose of PCBs, as cited in Count One, are represented by Level One on the matrix in the Penalty Policy.

10. The extent of these counts is represented by "minor" on the matrix.

11. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business. Respondent may submit appropriate documentation to rebut that presumption during settlement negotiations. Taking into account all the above factors, the penalty for Respondent, S.J. Nudelman and Son, as prescribed by the matrix, is \$5,000.

12. Based on the degree of culpability of Respondent and such other matters as justice requires, no further adjustment of the penalty is indicated at this time. If appropriate, further penalty adjustments may be made during settlement negotiations.

1 **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

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3 13. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these

4 proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

5 Under those rules, Respondent has the right to request a formal hearing to contest any

6 material fact set forth in this Complaint or to contest the appropriateness of the

7 proposed penalty.

8 14. To avoid being found in default, which constitutes an admission of all

9 material facts alleged in the Complaint and a waiver of the right to a hearing, and

10 which will effect the assessment of the above civil penalty without further proceedings,

11 Respondent must file with the Regional Hearing Clerk a written Answer within twenty

12 (20) days after receiving this Complaint. Respondent's Answer must clearly and directly

13 admit, deny, or explain each of the factual allegations contained in this Complaint with

14 regard to which Respondent has any knowledge. Where Respondent has no knowledge

15 of a particular fact and so states, the allegation is deemed denied. Failure to deny any

16 material factual allegation constitutes an admission of the allegation. The Answer shall

17 also state: (1) the circumstances or arguments which are alleged to constitute the

18 grounds of defense; (2) the facts which Respondent intends to place at issue; and

19 (3) whether a hearing is requested. A hearing is deemed requested should Respondent

20 contest any material fact upon which the Complaint is based or raise any affirmative

21 defense, or contend that the amount of the penalty proposed in the Complaint is

22 inappropriate, or claim that Respondent is entitled to judgment as a matter of law. The

23 Answer must be sent to:

24

25 Regional Hearing Clerk, Region 10
26 U.S. Environmental Protection Agency
27 1200 Sixth Avenue, SO-155
28 Seattle, Washington 98101

1 15. A copy of the Answer and all other documents which Respondent files in this
2 action must be furnished to Stephanie Delaney, Assistant Regional Counsel, the attorney
3 assigned to represent EPA in this matter, at:

4 Office of Regional Counsel, Region 10
5 U.S. Environmental Protection Agency
6 1200 Sixth Avenue, SO-155
7 Seattle, Washington 98101

8 16. Failure to file an Answer or respond to this civil Complaint may result in a
9 default order being issued which assesses the full civil penalty.

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11 **V. INFORMAL SETTLEMENT CONFERENCE**
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13 17. Whether or not a hearing is requested, Respondent may contact the
14 above-named attorney to arrange for an informal settlement conference to discuss the
15 facts of this case, the amount of the proposed penalty, or the possibility of settlement.
16 An informal settlement conference does not, however, affect Respondent's obligation to
17 file a timely written Answer (which is due within 20 days of receipt of this Complaint,
18 unless EPA and Respondent agree to a later date).

19 18. EPA has the authority to modify the amount of the proposed penalty, where
20 appropriate, to reflect any settlement reached with Respondent in an informal
21 conference. The terms of such an agreement would be embodied in a Consent
22 Agreement and Consent Order. A Consent Agreement and Consent Order entered into
23 by and between EPA and Respondent would be binding as to all terms and conditions
24 specified therein upon signature by the EPA Regional Administrator.

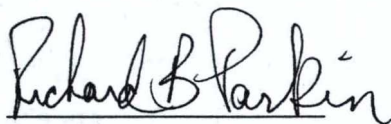
25 19. Respondent is advised that, after the Complaint is issued, the Consolidated
26 Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of these or
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1 any other factually related proceedings with the EPA Regional Administrator,
2 Administrative Law Judge, any member of the Environmental Appeals Board, or any
3 person likely to advise these officials in the decision of this case.
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6 **VI. PAYMENT OF PENALTY**
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8 20. Instead of requesting an informal settlement conference or filing an Answer
9 requesting a hearing, Respondent may choose to pay the proposed penalty. In order to
10 do this, Respondent must first establish contact with the EPA attorney named in Section
11 IV of this Complaint to arrange for the preparation of a Consent Agreement and
12 Consent Order.
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16 ISSUED AT SEATTLE this 3RD day of February, 1995.
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George Abel, Chief

23 Pesticides and Toxic Substances Branch
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5 CERTIFICATE OF SERVICE
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10 I hereby certify that the original of the foregoing Complaint, Docket Number
11 10-95-0012-TSCA, has been filed with the Region 10 Hearing Clerk, and that a true and
12 correct copy (with accompanying copies of the Consolidated Rules of Practice and the
13 Polychlorinated Biphenyls (PCB) Penalty Policy) was sent by Certified Mail, Return
14 Receipt Requested, to:

15
16 Stanford J. Nudelman, Registered Agent for
17 S.J. Nudelman and Son
18 2707 N.W. Nela Street
19 Portland, Oregon 97210

20 2-3-95
DATE

Dorothy H. Evans
NAME

21 Clerk - Typist, ATD, PTSB Branch
TITLE
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